

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SHIRLEY MILLER,

Plaintiffs,

v.

MACY’S RETAIL HOLDINGS, LLC
D/B/A MACY’S DEPARTMENT STORE,
ABC CORPS 3 1-3; AND JOHN DOES
#1-3,

Defendants.

Civil Action File No:

NOTICE OF REMOVAL

COMES NOW Macy’s Retail Holdings, LLC (“Macy’s” or “Defendant”), Defendant in the above-styled action, and petitions for removal of the action herein from the State Court of Cobb County to the United States District Court for the Northern District of Georgia, Atlanta Division and respectfully shows the Court the following:

1.

The incident which is the basis of the Plaintiff’s suit occurred in Cobb County, Georgia, which is within the jurisdiction of the Northern District of Georgia, Atlanta Division.

2.

The parties to this action are Plaintiff Shirley Miller, a citizen of the State of Georgia who resides within the Northern District of Georgia and Defendant Macy's Retail Holdings, LLC, a corporation organized and existing under the laws of the State of Ohio, maintaining its principal office and principal place of doing business in Ohio.

3.

In this action, Plaintiff alleges that an automatic door closed on her and caused her to fall while on the premises of the Macy's department store located in Marietta, Georgia, and she seeks to recovery for alleged injuries and damages arising from the same. (*See generally* Complaint, Exhibit A).

4.

To determine whether the jurisdictional threshold of \$75,000 is met, a court must assume that plaintiff will "prevail" on all claims, and then assess whether "an award below the jurisdictional amount would be outside the range of permissible awards because the case is clearly worth more than \$75,000.00." *Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1096 (11th Cir. 1994).

5.

Plaintiff filed a civil action in the State Court of Cobb County, then styled *Shirley Miller v. Macy's Retail Holdings, LLC d/b/a Macy's Department Store, Cobb Place Associates L.P. d/b/a town Center at Cobb, ABC Corps #1-3 and John Does #1-3*, Civil Action File No. 23-A-421 ("State Court Action"). Macy's filed its Defenses and Answer on March 3, 2023. (See Answer, Exhibit A).

6.

At the time that Macy's filed its Answer, Cobb Place Associates L.P. was a defendant. Cobb Place Associates L.P. is a corporation organized and existing under the laws of the State of Georgia. This defendant was dismissed by Order dated July 5, 2023, thus creating diversity of the parties for the purpose of removal. (See Order, Exhibit A).

6.

Under 28 U.S.C. § 1446(b)(3), "if the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable."

10.

Plaintiff's Complaint states that her claimed damages are excess of \$109,587.66. (Complaint, Exhibit A, ¶ 24).

19.

Therefore, this action is one over which this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332, in that (a) Plaintiff and Defendant are citizens of different states, and (b) the matter in controversy has a value, exclusive of interest and costs, in excess of \$75,000.

20.

Attached as Exhibit "A" are copies of all process, pleadings, and orders received by counsel for Macy's in such action.

24.

Attached as Exhibit B is a copy of the notice filed with the State Court of Cobb County required by 28 U.S.C. § 1446(d).

WHEREFORE, Defendant Macy's prays that this petition be filed, that said action be removed to and proceed in this Court, and that there be no further proceedings in said case in the State Court of Cobb County.

The undersigned has read this Notice of Removal, and to the best of her knowledge, information and belief, formed after reasonable inquiry, determined it

is well-grounded in fact, is warranted by existing law, and is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Respectfully submitted this 4th day of August, 2023.

DREW ECKL & FARNHAM, LLP

s/ Lisa R. Richardson

Lisa R. Richardson

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Attorneys for Defendant Macy's Retail Holdings, LLC

13696696v1
07613-253959

CERTIFICATE OF FONT COMPLIANCE

Counsel for Defendant hereby certifies that the forgoing has been prepared with one of the font and point selections approved by the Court in LR 5.1(B): Times New Roman (14 point).

This 4th day of August, 2023.

DREW ECKL & FARNHAM, LLP

s/Lisa R. Richardson

Lisa R. Richardson

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Attorney for Defendant Macy's Retail Holdings, LLC

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am counsel for Defendant Macy's Retail Holdings, LLC and that I have this day served the foregoing *Notice of Removal* upon all parties to this matter by placing a true and correct copy of same in the United States mail, proper postage affixed thereto, addressed to the following counsel of record:

Virginia C. Josey
Virginia Josey Law
P.O. Box 26385
Macon, GA 31221
vcj@virginiajoseylaw.com

This 4th day of August, 2023.

s/ Lisa R. Richardson

Lisa R. Richardson

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